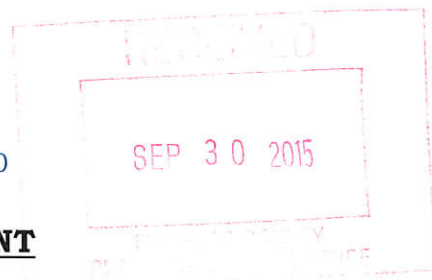


Flathead County

Planning & Zoning

1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 1593.00

APPLICANT/OWNER:

1. Name: Robert J. Zavadil Phone: (406)270-4966
2. Mail Address: 249 Moraine Drive
3. City/State/Zip: Whitefish, MT 59937
- 4 Interest in property (if map amendment): Owner

Check which applies:



Map Amendment



Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

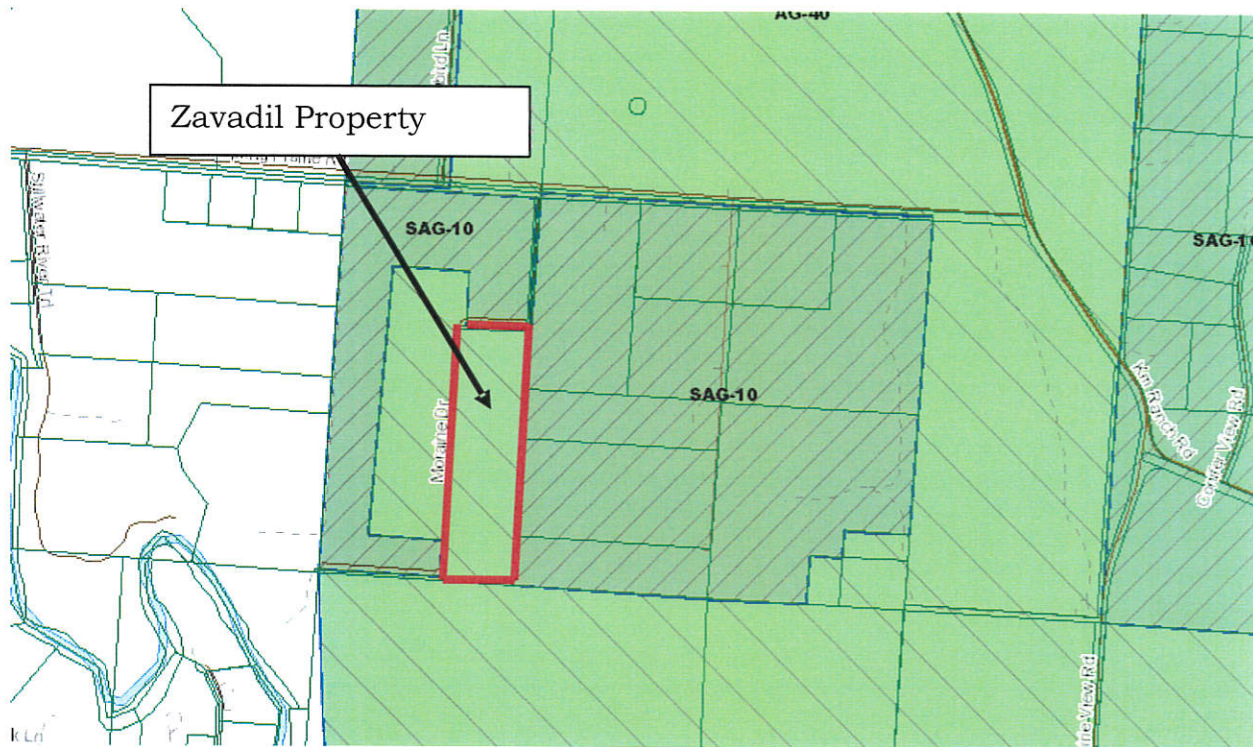
IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

- A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: 249 Moraine Drive, Whitefish
- B. Legal Description: Tract 2BA (See Attached Warranty Deed)
(Lot/Block of Subdivision or Tract #)
35 - T30N - R22W
Section Township Range
(Attach sheet for metes and bounds)
- C. Total acreage: 20.843 acres
- D. Zoning District: Highway 93 North Zoning District
- E. The present zoning of the above property is: AG-40 (Agricultural)
- F. The proposed zoning of the above property is: SAG-10 (Suburban Agricultural)
- G. State the changed or changing conditions that make the proposed amendment necessary: The property is 20.843 acres in size and the applicant has a house and a guest house. The applicant's goal is to split the guest house and 10.8 acres and gift to his daughter who lives in the guest house.

Figure 1



THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The property is located within the boundary of the Flathead County Growth Policy. The Growth Policy Map identifies the property as "Agriculture". The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base. The SAG-10 (Suburban Agriculture) designation is a land use category that is consistent with and generally conforms to the "Agricultural" designation.

The Flathead County Growth Policy identifies a number of Goals and Policies that support the proposed Map Amendment.

G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.

P.3.3 – Maintain flexibility of land use option to forest and agriculture land owners by focusing on mitigating the negative impacts of development.

The proposed zoning designation will grant flexibility to create a parcel of land for the owners daughter with a density that mitigates the impacts on neighboring agricultural practices.

G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land use.

The SAG-10 designation allows for agricultural use which is consistent with the neighboring land uses and zoning classifications. The proposed SAG-10 will allow the owner to gift a piece of property to his daughter who is already living on the property.

P.4.3.- Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)

The ten acre density proposed with the Map Amendment will preserve the agricultural character of the neighborhood while allowing for the efficient provision of government services.

G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.

The proposed SAG-10 will allow a density of 1 residential unit per ten acres. As the property is 20.8 acres in size, the maximum number of lots would be two (One additional lot). As there is currently a house and a guest house on the property, following with a split of the land, there will still only be the two houses. Therefore in this specific case, the zoning change will not increase the density of housing units or change the character of the neighborhood.

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The subject property is within the West Valley Fire District. As there is currently a house and guest house on the property and the applicants propose to split the

property with a house on each parcel, the proposed zone change will not change the existing conditions or density. The zone change will not have a negative impact on safety from fire or other dangers.

- b. Promote public health, public safety and the general welfare? The property accesses Spring Prairie Road via a 20-foot strip of land owned by the applicants, this strip also serves as the access for the two residential structures on the property. Spring Prairie Road is a paved County maintained road and designated County collector that provides convenient and safe access to the property. The Flathead County Sheriff's Office provides police protection and the West Valley Fire District provides fire and ambulance service.

The proposed SAG-10 zoning classification provides the same setback and height standards as the existing AG-40 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-40 (existing) and SAG-10 (proposed) are almost identical. The exceptions are the AG-40 allows fish hatcheries and kennels as permitted uses while the SAG-10 does not. The AG-40 allows, with a Conditional Use Permit (CUP), feed and seed processing plants, feed lots, landfills, and rifle ranges whereas the SAG-10 does not, but the SAG-10 allows golf courses, and manufactured home parks where the AG-40 does not.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to Spring Prairie Road which is a paved County maintained road. As there is currently a house and guest house on the property, where Bob Zavadil lives in the main house and Ann Zavadil lives in the guest house, we calculate that there are 20 vehicle trip attributed to the property per day. If the zone change is approved and the property is split by family transfer with Bob living on one lot and Ann living on the other, there will still be only 20 vehicle trips per day attributed to the subject parcel.

The subject property is currently serviced by individual sewer and a shared water system which will not change as a result of this zone change. According to the septic system application (approved 4/11/07

Permit #07-5155N) for the guesthouse, the groundwater was at 72 inches. The water well is good and the applicants have water rights for the well.

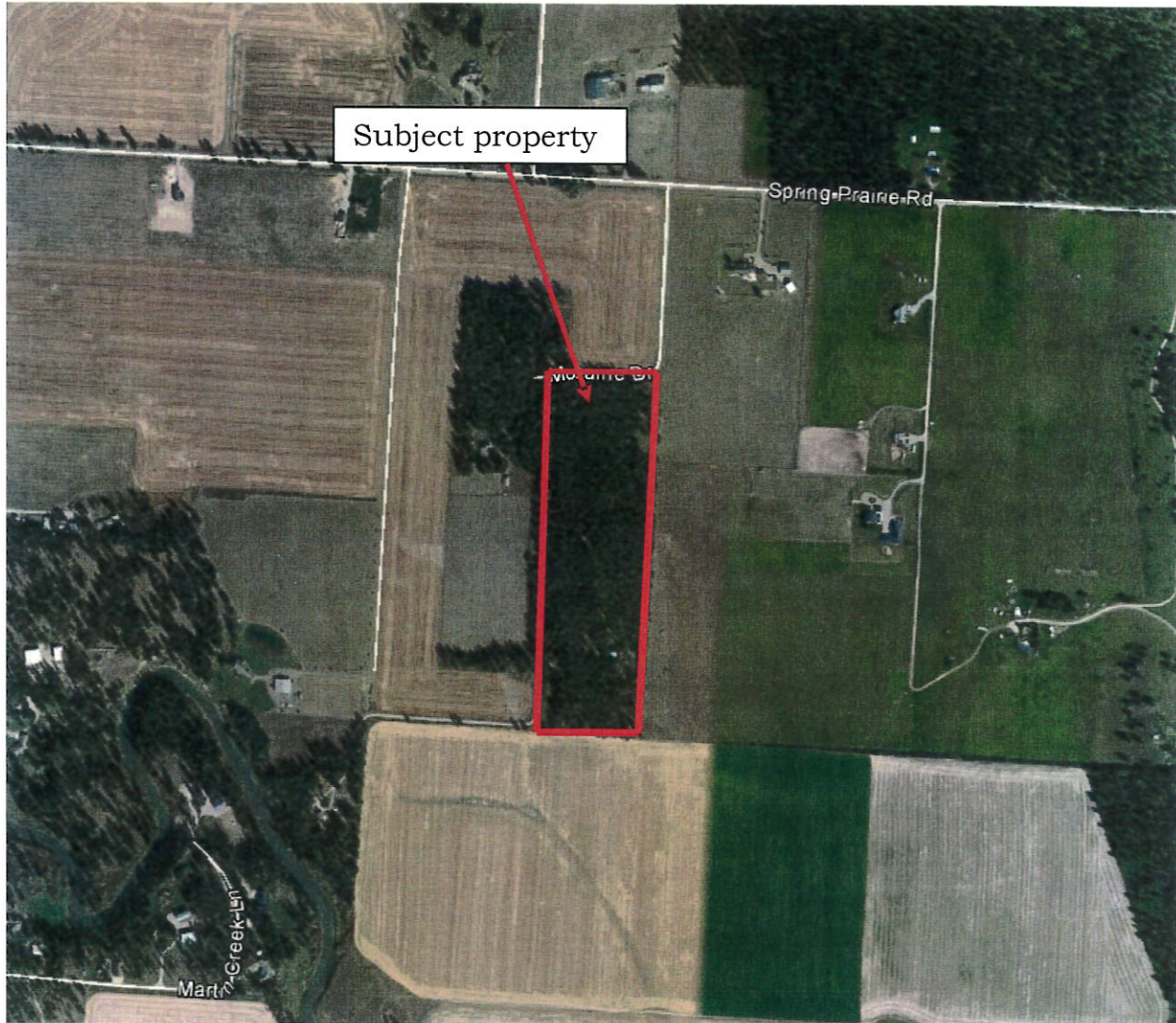
The property is within the Whitefish School District. In general, larger lots, like the 10 plus acres parcels proposed with the SAG-10 zoning, require less park land than urban densities with small yard areas.

3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The proposed SAG-10 zoning designation has a minimum lot size of ten acres and identical setbacks to the AG-40. As much of the property located around the applicant's property is already zoned SAG-10, the proposed zoning designation does provide adequate light and air.
- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Spring Prairie Road which is paved and constructed to County Standards within a 60-foot road right-of-way. The road network provides good access for vehicles and with the relatively low traffic volumes (657 trips per day according to the Flathead County Road Department 2012 counts) provides decent access for bike and pedestrian use. There are no public bike or pedestrian trails near the subject property.
- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is not located within close proximity of a City or Town. The existing zoning designation and the proposed designation are both "Rural" in land use and density.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is a 20.843 acre tract that is surrounded by a SAG-10 zoning designations and tracts that vary in size from 2 acres to 160 acres. (See Figures 1 and 2). The property to the south is farm and pasture with zoning of AG-40 and very large tracts of land. The property to the east is suburban residential with tracts of 10 to 20 acres in size with zoning of SAG-10. The property to the north is a mix of farmed land

and suburban residential properties with zoning of SAG-10. The properties to the west are a mix of farmed land and suburban residential uses with zoning AG-40, SAG-10, and un-zoned lands. The uses allowed in the AG 40 are almost identical to those of the proposed SAG-10.

Figure 2



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed SAG-10 zoning classification provides the same setback and height standards as the existing AG-40 zone and very similar land use regulations. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-40 (existing) and SAG-10 (proposed) are almost identical with 17 permitted uses being the same and 21 conditionally permitted uses being the same. The differences are as follows: the AG-40 allows fish hatcheries and kennels as permitted uses while the SAG-10 does not. The AG-40 allows, with a Conditional Use Permit (CUP), feed and seed processing plants, feed lots, landfills, and rifle ranges whereas the SAG-10 does not, but the SAG-10 allows golf courses, and manufactured home parks where the AG-40 does not.

- ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

The proposed zone change encompasses 20.8 acres. Although this is not a huge property it is directly adjacent to a large area of land currently zoned SAG-10. Therefore, when the subject property is combined with the adjacent SAG-10 lands they are a large number of land owners and significant land area with the SAG-10 zoning designation.

- iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.*

As stated previously, many of the neighboring landowners already have the requested SAG-10 zoning. Therefore, the proposed map amendment will give the applicant the same zoning designation as many of his neighbors.

As presented the proposed zone change application does not meet the three tests for "spot zoning" and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and

conditionally permitted uses of the proposed Zoning designation of SAG-10 are almost identical to that of the existing AG-40 zoning classification. In the case of the applicants property, he currently has a house and guest house on the property and if he gifts ten acres and the guest house to his daughter, then there would no change in density or impact.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The nearest City Zoning is the Kalispell Zoning Jurisdiction which is approximately 2.67 mile to the southeast at Church Drive and Highway 93. The City's zoning is comprised of R-2, R-4, and B-1 PUD at that location. The City zoning designations are urban in scale and density and do not have any continuity with the applicants rural property.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.

Robert Zandil
Owner/Applicant Signature(s)

28 Sept 15
Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.